

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSE A. MARTINEZ,
Petitioner,
v.
TIMOTHY WENGLER,
Respondent

Case No. C08-5144FDB

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING
PETITIONER**

The Magistrate Judge recommends dismissal of this habeas corpus petition because it is not timely filed. Petitioner has filed objections, pointing out, among other things, the rule that the time that a matter is pending for post-conviction review does not count toward the limitation period. This rule was duly taken into consideration by the Magistrate Judge when he calculated elapsed time for statute of limitations purposes in this case. The Petitioner's objections are without merit.

The Court, having reviewed the two petitions for habeas corpus, respondent's motion for summary judgment, the Report and Recommendation of Judge J. Kelley Arnold, United States Magistrate Judge, and the remaining record, does hereby find and ORDER.

- (1) The Court adopts the Report and Recommendation.
 - (2) The Petition was not filed within the one year period of limitation, and it is therefore DENIED.
 - (3) Petitioner's pending motions, if any, are DENIED, as being moot.
 - (4) The Clerk is directed to send copies of this Order to plaintiff, to counsel of record, and to

DATED this 30th day of September 2008.

The signature is handwritten in black ink, appearing to read "Karen Karpinski". It is written in a cursive style with a prominent, sweeping initial stroke.

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE